IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WA.No. 488 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.29731/2006
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APPELLANT: PETITIONER

P.KARTHIYAYANI,
MANAGER, KADAMBUR HIGHER SECONDARY SCHOOL,
KADAMBUR, EDAKKAD, KANNUR DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF
GENERAL EDUCATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR.

4. SRI.P.M.VINODKUMAR,
KAITHERIKANDY HOUSE, MUTTANNOOR,
PATTANOOR P.O., KANNUR.

BY GOVERNMENT PLEADER K.SANDESH RAJA. FOR R1 TO R3
SRI.V.A.MUAHMMED FOR R4
SRI.K.E.HAMZA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 06/06/2007, THE COURT ON 27/6/2007 DELIVERED THE
FOLLOWING:

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.

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W.A. NO. 488 OF 2007

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Dated this the 27th day of June, 2007

J U D G M E N T

Antony Dominic, J.

Writ petition was filed by the Manager of an aided School to quash Exhibits P9 and P14 orders and to declare that respondents 1 and 2 had exceeded their powers while interfering with the punishment imposed on the 4th respondent, who was an High School Assistant in the school. Writ Petition was dismissed and hence, this appeal.

2. The Principal of the school had received several complaints from minor girls students of Standard XA alleging sexual abuse by the 4th respondent, their class teacher and this led to a discreet enquiry being conducted by the Principal. Finally complaints were found to be genuine vide Ext.P1 report and the same was submitted to the Manager. In view of the gravity of the allegations disclosed in the report, the 4th respondent was placed under suspension on 21.2.2005. Later Ext.P2 memo of charges was served on the 4th respondent after getting approval from the Education Department. Explanation filed to the memo of charges was found to be unsatisfactory and an enquiry

was conducted by the District Educational Officer.

3. The order of suspension was earlier challenged by the 4th respondent in WP(C) No.14794/2005, which was disposed of by judgment dated 18/5/2005 directing the District Educational Officer, Kannur to dispose of Ext.P14 representation. Subsequently, alleging that some of the documents produced and relied on by the 4th respondent in the aforesaid writ petition were forged, the appellant filed RP 498/05 before this Court, which was disposed of by order dated 7/7/05 directing the District Educational Officer, the Enquiry Officer, to examine the genuineness of the documents.

4. The District Educational Officer completed the enquiry and submitted Ext.P3 report, finding that the behaviour of the 4th respondent towards the girls students of his class was most objectionable and that he had also abused the process this court by producing forged documents for unlawful gains. The appellant herein issued Ext.P4 show cause notice proposing to impose punishment of dismissal from service in terms of Rule 65(vii) of Chapter XIV A KER. Reply submitted by the fourth respondent to Ext.P4 was found to be unsatisfactory and sanction of the Deputy Director of Education, Kannur was sought for imposing the punishment of dismissal from service. Permission was granted by the Deputy Director vide Ext.P7

order. Ext.P8 order was then issued by the appellant on 18/10/05 dismissing the 4th respondent from service w.e.f. 21.2.05, the date on which he was placed under suspension.

5. The order of dismissal was challenged by the fourth respondent vide Ext.P15 appeal before the 2nd respondent. Additional Director of Public Instruction heard the appeal and passed Ext.P9 order setting aside the Enquiry Report and the order of dismissal and directed reinstatement of the 4th respondent as High School Assistant with all monetary benefits.

6. Appellant challenged Ext.P9 order in revision before the 1st respondent invoking Rule 92 of Chapter XIV A. Revisional Authority heard the parties on 7/7/06 and passed Ext.P14 order setting aside the orders of dismissal and directed the Deputy Director of Education, Kannur to conduct a fresh enquiry ordering reinstatement of the 4th respondent in service. Challenging by the above mentioned orders, the present Writ Petition has been preferred by the Manager to quash Exts.P9 and P14 orders, and also for other consequential reliefs.

7. The learned Single Judge found no reasons to interfere with Exts.P9 and P14 orders and dismissed the Writ Petition. Aggrieved by the same, the Manager has preferred this appeal.

8. Counsel for the appellant submitted that the enquiry

conducted against the fourth respondent was in compliance with the principles of natural justice and the fourth respondent was offered sufficient opportunity to cross examine the witnesses. The fourth respondent however did not avail of the same and hence the finding of the authorities that the fourth respondent was not afforded reasonable opportunity to cross examine the witnesses is perverse. Further it was contended that the misconduct alleged against the fourth respondent in this behalf was one which did not require any corroboration. Enquiry Officer on sufficient materials also found that the fourth respondent had forged documents and produced the same before this Court and therefore no interference was called for.

9. Counsel for the fourth respondent however attempted to sustain the orders impugned in the Writ Petition as also the judgment of the learned single Judge. According to him, it was purely on the uncorroborated testimony of one of the students and who was not subjected to cross examination to test the veracity of the version given by her, that the whole findings of the Enquiry Officer was based. According to him, it was based on this finding that capital punishment of dismissal was imposed on the fourth respondent and it necessitated a foolproof enquiry to be held by the Enquiry Officer. According to him, the fourth respondent was not offered a chance to

examine the witnesses by himself when permission to be represented by a lawyer was declined. According to him, finding of forgery is also baseless and in any case, a premature one, in as much as, the same issue was pending consideration of the Judicial First Class Magistrate, pursuant to a complaint made in that behalf by the Headmaster of the School. He would submit that the orders of the Appellate Authority and the Revisional Authority, confirmed by the learned single Judge did not merit interference and this appeal is only to be dismissed.

10. We have considered the submissions made by counsel on either side. This is a case where serious allegations have been raised by the minor girl students against their class Teacher and the details of the untoward behaviour needs no repetition. Facts disclosed that on receipt of complaints from the four girl students, Principal of the School had made discreet enquiries and submitted Ext.P1 report to the Manager, confirming the correctness of the allegations made in the complaints. Fourth respondent was placed under suspension, with effect from 21.2.2005 and a memo of charges was issued vide Ext.P2. District Educational Officer, Kannur was appointed as Enquiry Officer and parties were given notice to appear on 11.7.2005. Among the complainants , only Kumari Razlin Abdul Nazar turned up for giving evidence and her statement was recorded. Statements of the Principal

and also the representative of the Manager were also recorded.

11. Despite the restriction contained in Rule 75(5), Chapter XIV A of the Kerala Education Rules that a Teacher may himself present his case before the Inquiring Officer and he may not be allowed to engage a legal practitioner for the purpose, the fourth respondent made an attempt to be represented by a counsel, which was turned down. Since the Rule itself imposed a restriction in engaging a counsel for representing a delinquent in disciplinary proceedings, the decision of the Enquiry Officer in turning down the request in this behalf cannot be faulted. It is evident from Ext.P16 report given by the Enquiry Officer to the Director of Public Instruction on 22.12.2005 that the fourth respondent was permitted to cross examine the complainant student and that the opportunity so extended to him was not availed of by him. Enquiry report shows that the request of the fourth respondent was turned down in view of the provisions contained in Rule 75(5) of Chapter XIV A of K.E.R. Further it was also stated that the fourth respondent had not submitted the list of his witnesses or documents to be relied on by him in the course of the enquiry. We do not find any averment in the affidavit filed by the fourth respondent disputing the correctness of the statements contained in Ext.P16 communication of the District Educational Officer. The District Educational Officer being

an independent outsider, against whom no malafides of any substance have been found, we are inclined to take the contents of Ext.P16 as correct. In this context, we also notice that the very fact that the delinquent chose to bring a counsel to the venue of the enquiry on 11.7.2005 itself will indicate that he was aware of the fact that the witnesses were available to be cross examined. It is in such circumstances that on being declined the request to be represented by counsel, the fourth respondent did not choose to examine the witness.

12. Thus, evidently, this is not a case where the fourth respondent was declined an opportunity to cross examine the witness, but is one where the fourth respondent chose not to avail of the opportunity extended to him. Question would be whether in such circumstances, it is open to the delinquent to complain that natural justice has been violated. This very issue has been considered by the Supreme Court in the case of **KL Tripathi** v. **State Bank of India** – A.I.R. 1984 S.C. 273, wherein it has been held that the party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Thus, in our view, it

cannot be contended by the fourth respondent that there has been violation of the principles of natural justice by denying him an opportunity to cross examine the student, who had deposed against him. If that be the position, we fail to understand the logic of the conclusion arrived at by the Appellate Authority in Ext.P9 that the fourth respondent was not given an opportunity to cross examine the complainant and that there was no evidence with regard to proof of that fact that the statement was recorded in his presence and an opportunity was given to cross examine the complainant.

13. We are therefore of the view that this is a case where the fourth respondent had not availed of the opportunity to cross examine that was extended to him and the Appellate and the Revisional Authorities have committed an error in holding otherwise and hence the reasoning of the learned single Judge also cannot be sustained.

14. Yet another ground on which the proceedings are invalidated is in relation to the finding of the Enquiry Officer on the issue that the fourth respondent had committed forgery of the records produced before this Court. As we have already noted, subsequent to the disposal of W.P.(C) No.14794 of 2005, alleging that the fourth respondent had committed forgery of certain documents produced in this Court, R.P.No.498 of 2005 was filed by the appellant, which was

disposed of by order dated 7.7.2005 directing the District Educational Officer to examine the genuineness of the documents produced by the fourth respondent. Documents were then produced before the Enquiry Officer and the fourth respondent was given an opportunity to disprove the allegations which he did not avail of. Be that as it may, the Enquiry Officer for reasons which are valid, came to the conclusion that Ext.P15 produced in the Writ Petition mentioned above, was a forged document. It is based on this finding also that the punishment of dismissal was imposed on the fourth respondent an appeal omitted to be noticed by the Revisional Authority.

15. We are at a loss to understand the reasoning of the Appellate Authority on the question of standard of proof. It is common knowledge that the standard of proof in a criminal case and in a disciplinary proceeding are totally different. While criminal cases are decided on the basis of proof beyond reasonable doubt, findings in disciplinary action rests on preponderance of probabilities. Appellate Authority has found fault with the Enquiry Officer on this finding for the reason that this was not a misconduct included in the memo of charges. Appellate Authority has omitted to note that it was pursuant to the order passed by this Court after hearing the fourth respondent that the Enquiry Officer was authorised to examine this

issue and non-inclusion of this misconduct in the memo of charges is of no consequence and has not caused any prejudice to the fourth respondent since he had ample opportunity to disprove the said allegations.

16. Apart from that, we also notice that Chapter XIV A, Rule 75 (8) of K.E.R. provides that if in the opinion of such authority the proceedings of inquiry establish charges different from those originally framed, it may record its findings on such charges provided that findings on such charges shall not be recorded unless the teacher has admitted the facts constituting them or has had opportunity of defending himself against them. Therefore, by force of the statutory provision, the Enquiry Officer is entitled to enter into a finding of guilt in respect of charges which are not included in the memo of charges, provided an opportunity to defend himself is extended to the delinquent. In this case, such an opportunity has been extended and if the delinquent has chosen not to avail of the same, that will not render the finding of the Enquiry Officer bad.

17. We are therefore of the considered view that both the Appellate and Revisional Authorities have committed a grave mistake in interfering with the findings of the Enquiry Officer, which are based on cogent and relevant materials. We therefore set aside Exts.P9 and

P14 and uphold Ext.P8 order of the Manager dated 21.2.2005 dismissing the fourth respondent from service. Judgment of the learned single Judge is accordingly set aside.

K.S.Radhakrishnan,
Judge.

Antony Dominic,
Judge.

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